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RM-11358

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

Verizon Telephone Companies  
Short Term Network  
Change Notifications

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)  
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Report Nos. NCD-1396, 1397, 1399

**OBJECTION**

**FILED/ACCEPTED**

**APR 19 2007**

Federal Communications Commission  
Office of the Secretary

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April 19, 2007

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## **SUMMARY**

The Commission should grant this Objection, at a minimum, as interim relief pending consideration of important issues raised in a recent Petition filed by the undersigned competitive carriers concerning ILEC copper loop retirement practices. The Petition explained that copper loops can be used to provide valuable broadband services to consumers, but that current rules permit ILECs to waste these valuable assets for no or any reason or to thwart broadband competition. Shortly after the Petition was filed, Verizon initiated a policy of accelerated and unnecessary retirement of the feeder portion of loops. The Commission should grant this Objection to prevent the harm to the public interest that would be caused by Verizon's proposed unnecessary feeder retirement.

Although Objectors do not oppose ILEC fiber upgrades, they strongly object to the unnecessary proposed corollary that Verizon will no longer provide unbundled access to copper loops from the identified locations. Verizon has not explained why the copper loop would no longer be available for unbundled access. Verizon apparently intends to "retire" copper loops merely by declaration even though they remain in place and could be used by competitors to provide valuable broadband services to consumers. This flatly violates Section 251(c)(3) because the Commission in the *TRO* determined that competitive carriers are impaired in provision of broadband and narrowband services without access to unbundled copper loops.

The showings required by Section 51.333(c) of the rules reflect a cramped and obsolete vision of the public interest. Objectors are required to explain the details of when and how they will accommodate the proposed ILEC network change. This may make sense for routine network changes, but not for wholesale removal of copper loops that prevent CLECs from providing service. Section 51.333(c) may envision that Objectors will immediately be affected by the proposed ILEC change. In this situation, however, it is the future impact of copper loop retirement that is more important than the immediate disconnection of some customers because the retirements will make it permanently impossible for consumers to receive valuable competitive broadband services in widespread areas.

The requested relief would not harm Verizon. It would not prevent Verizon from upgrading to fiber. Verizon would not experience any inefficiencies or unreimbursed costs in providing unbundled access to spare copper loops.

The Commission should permit Verizon to install fiber feeder subject to the requirement that it make copper loops available from the specified locations. This requirement should continue, at a minimum, pending consideration of the Petition.

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**OBJECTION**

The undersigned competitive local exchange carriers submit this Objection to Verizon's proposed retirement on short term notice of copper feeder facilities at locations in Maryland, Pennsylvania, and Rhode Island.<sup>1</sup> The Commission should require Verizon to continue to make copper loops available while permitting installation of fiber feeder at these locations.<sup>2</sup>

**I. THIS OBJECTION SHOULD BE GRANTED, AT A MINIMUM, AS INTERIM RELIEF**

The Commission should require Verizon to continue to make copper loops available at the specified locations, because, if for no other reason, interim relief is appropriate pending resolution of important issues concerning ILEC copper retirement practices raised in the recent

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<sup>1</sup> Wireline Competition Bureau Short Term Network Change Notification Filed By Verizon, Public Notice, Report No. NCD-1396, April 6, 2007; Wireline Competition Bureau Short Term Network Change Notification Filed By Verizon, Public Notice, Report No. NCD-1397, April 6, 2007; Wireline Competition Bureau Short Term Network Change Notification Filed By Verizon, Public Notice, Report No. NCD-1399, April 6, 2007.

<sup>2</sup> Of the undersigned CLECs, BridgeCom International, Inc., Broadview Networks, Inc., Cavalier Telephone, LLC, DeltaCom, Inc., Eureka Telecom, Inc. d/b/a InfoHighway Communications, Florida Digital Network, Inc. d/b/a FDN Communications, IDT Corporation, McLeodUSA Telecommunications Services, Inc., Mpower Communications Corp., RCN Telecom Services, Inc., RNK, Inc., TDS Metrocom, LLC, and U.S. Telepacific Corp. d/b/a Telepacific Telecommunications are directly interconnected with Verizon.

Petition filed by the undersigned competitive carriers.’ Those issues should be resolved before ILECs are permitted to implement widespread retirements, particularly where as here, as explained below, Verizon is accelerating retirement and, moreover, apparently intends to “retire” the copper by declaration even though it will remain in place and could be made available for unbundled access.

The Petition explained that recent technical and marketplace developments make clear that the long-sought “third-wire” to the home already exists; that preservation of copper loops serves the public interest because CLECs are able to use them to provide a “triple play” of video, voice, and high-speed Internet access that affords consumers new service choices and lower prices; but that current **rules** permit ILECs to waste valuable copper loops for any or no reason or merely in order to preclude potential broadband competitors **from** providing service. The Petition stressed that current rules also disserve the public interest because they fail to implement the mandate of Section 706 of the 1996 Act.<sup>4</sup>

Shortly after the Petition was filed Verizon initiated a policy of accelerated and unnecessary copper loop retirement, most likely to evade rules that the Commission might establish in response to the Petition. In February and March 2007, Verizon posted on its website 100 notices of network changes for replacement of copper with fiber in the feeder portion of

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<sup>2</sup> Petition of BridgeCom International, Inc. *et al.*, filed January 18, 2007 (“Petition”); Pleading Cycle Established for Comments on Petitions for Rulemaking and Clarification Regarding the Commission’s Rules Applicable to Retirement of Copper Loops and Copper SubLoops, Public Notice, RM-I 1358, DA 07-209, released January 30, 2007.

<sup>4</sup> Section 706 requires the Commission to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans ... including [by] measures that promote competition in the local telecommunications market ....” 47 U.S.C. § 157(b)

loops in Maryland, Pennsylvania, and Rhode Island. Of these notices, 28 are short term notices that Verizon proposes to implement within six months in Middle River, Maryland; Aliquippa, Bamesboro, Blairsville, Ebensburg, Erie, Greenville, New Stanton, Patton and Tyrone, Pennsylvania; and Burrville, Cranston, Cumberland, East Providence, Newport, Pawtucket, and Tiverton, Rhode Island. These short term notices are the subject of this Objection? Each of these notices states that any xDSL or metallic loops in service will be disconnected on the proposed implementation date. This will require CLECs to terminate provision of broadband services at these locations. CLECs also will be unable in the future to expand to these areas provision of valuable competitive broadband offerings.

Verizon's February and March notices together are more than double the number of network change notices that Verizon has provided for any reason over the last 5 years. And, although Verizon has been installing fiber feeder for years, based on a review of its network disclosure notices on its website since 1997, there is only one other instance that it has chosen to also make the copper feeder unavailable for unbundled access when it upgrades feeder to fiber. Verizon's accelerated feeder retirement raises the possibility of Verizon and potentially other ILECs substantially harming the public interest under the current rules while the Commission considers the important issues raised in the Petition

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<sup>5</sup> In the *TRO*, the Commission modified its network disclosure rules to provide for an opportunity to object to notices of retirement of copper loops and subloops when replaced by FTTH, but provided that this would not apply to notices of retirement of the feeder portion of loops. *TRO* n. 829. However, the preexisting rules provided that objections may be filed with respect to short term notices. Therefore, this Objection may be filed with respect to these short term notices for retirement of copper feeder. This is consistent with the Commission's Public Notices in this case which specifically state that pursuant to Section 51.333(c) of the Commission rules objections may be filed within nine business days.

Accordingly, the Commission should grant this Objection while it reviews the issues raised in the Petition to prevent the substantial public interest harm that Verizon proposes.

## **II. OBJECTORS DO NOT OPPOSE ILEC FIBER UPGRADES**

Lest there be any doubt on this issue, the undersigned competitive carriers do not object to installation of fiber in the feeder portion of Verizon's loops. However, they strongly object to the unnecessary proposed corollary to this upgrade of Verizon no longer providing copper feeder as part of unbundled access to copper loops. Verizon may, and should be required to, maintain access to copper loops notwithstanding installing fiber. This is particularly the case since Verizon, as noted in the next section of this Objection, has provided no explanation of why it is declaring the feeder portion of loops off limits for unbundled access. There is no technical reason to do so; it is doing so for the sole reason of foreclosing intramodal broadband competition.

## **III. VERIZON HAS FAILED TO STATE WHY THE COPPER LOOP WOULD NO LONGER BE AVAILABLE FOR UNBUNDLED ACCESS**

A striking feature of Verizon's notices is that they fail to provide any explanation of why the copper feeder portion of the loop would no longer be available. In response to the Petition, Verizon stated that it should be permitted to "retire" loops simply by declaring them to be retired even though they remain in place and could be used by competitors to provide valuable services to consumers? The present notices are apparently an effort to implement retirement by declaration. For all the reasons stated in the Petition, the Commission should clarify that loops

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<sup>6</sup> Verizon Comments, RM-I 1358, filed March 1, 2007, 20



are retired from unbundling obligations only when there is a genuine reason that they are no longer available such as removal or *force majeure*.<sup>7</sup> Verizon's approach to retirement is flatly unlawful under Section 251(c)(3) of the Act because the Commission has determined that CLECs **are** impaired without unbundled access to copper loops for provision of both broadband and narrowband services.<sup>8</sup> Verizon may not under Section 251(c)(3) make copper loops off limits for unbundled access merely by declaration. To that point, it is not in the public interest for the Commission **to** permit such measures of "self-help" that flaunt statutory requirements.

#### **IV. SECTION 51.333(C) EMBODIES AN UNDULY CRAMPED AND OBSOLETE VISION OF THE PUBLIC INTEREST**

Section 51.333(c) of the Commission's rules requires that objections to ILEC network change notices provide a range of information concerning why the connecting carrier cannot accommodate the proposed changes by the date proposed by the ILEC. The objector is required to state specifically why it cannot accommodate the proposed change by the date chosen by the ILEC,<sup>9</sup> the steps the objector **is** taking **to** accommodate the **change**,<sup>10</sup> and the earliest date (not later than **six** months after the ILEC date) by which the objector could accommodate the change.<sup>11</sup> The apparent thrust and assumption of these required showings is that the objector

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<sup>7</sup> Petition 10.

<sup>8</sup> TRO ¶ 248.

<sup>9</sup> 47 C.F.R. § 51.333(c)(1).

<sup>10</sup> 47 C.F.R. § 51.333(c)(2).

<sup>11</sup> 47 C.F.R. § 51.333(c)(3).

with reasonable effort can accommodate ILECs' proposed network changes and that the only issue is when it can do so.

This approach may make sense for most routine network upgrades and the like that, while altering the way that the competitor must interconnect with the ILEC, do not fundamentally change the ability or utility of interconnection with the ILEC. It may be that at the time the basic network disclosure rules were adopted most network changes could be accommodated by reasonable technical changes such as by purchasing new equipment that is compatible with the ILEC's proposed change or revising network protocols. Thus, when it adopted rules implementing the network disclosure obligations of the 1996 Act, the Commission envisioned the following examples of network changes that would trigger public disclosure obligations:

changes that affect: transmission; signaling standards; call routing; network configuration; logical elements; electronic interfaces; data elements; and transactions that support ordering, provisioning, maintenance and billing.”

Interconnecting carriers can accommodate such changes. On the other hand, they cannot accommodate wholesale withdrawal of loops. Similarly, the Commission envisioned as a worst case that a proposed change might result in an interruption of service between the ILEC and competitive carrier, not a permanent disability of the competitor to provide service.”

But this approach of assuming that the interconnecting carrier can and will accommodate the proposed change is inappropriate where the proposed change prevents the connecting carrier

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<sup>12</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order, CC Docket No. 96-98, FCC 96-333, released August 8, 1996, ¶ 182.

<sup>13</sup> *Id.* ¶ 216.

from providing service at all, **as** is the case with Verizon's proposed unnecessary "retirement" of the feeder portion of the loop. As stated in Verizon's notices, the proposed change will foreclose provision of xDSL-based broadband services, and the innovative "triple play" of narrow band and broadband services the competitive carriers are beginning to roll out.

CLECs **are** unable in any respect to accommodate the instant Verizon proposed changes through routine network modifications or ways of doing business. This is because of all the reasons for which the Commission in the *TRO* found that CLECs are impaired without unbundled access to copper loops. The Commission stated:

...we find that requesting carriers are generally impaired **on** a national basis without unbundled access to an incumbent LEC's local loops, whether they seek to provide narrowband or broadband, or both. ''

The Commission found that high fixed and sunk costs, large economies of scale, and operational barriers created impairment for the provision of broadband or narrowband services without access to ILEC loops. '' The Commission contemplated that CLECs would use unbundled copper loops to provide xDSL broadband services,<sup>16</sup> such as ADSL, HDSL, UDSL, and VDSL.<sup>17</sup> The Commission found that:

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<sup>14</sup> *TRO* ¶ 248.

<sup>15</sup> *TRO* n. 139

<sup>16</sup> *TRO* ¶ 215 ("For the mass market, carrier can use copper **loops** to provide **both** narrowband voice service and broadband xDSL services.")

<sup>17</sup> *TRO* n. 661.

...we determine that unbundled access to conditioned  
 copper loops ... is sufficient to overcome such impediments for the  
 provision of broadband services.<sup>18</sup>

B CLECs are impaired for provision of broadband services without access to  
 unbundled copper loops, there is no impediment to Section 51.333(c) requirements that an  
 objector provide details of the steps it is taking, or could take, to accommodate the proposed  
 change. The fact is that the changes will make it impossible for CLECs to provide xDSL-based  
 service.

Apart from apparently being premised on more modest network changes than retirement  
 of copper loops, Section 51.333(c) also may assume that the competitive market  
 currently providing service from the affected central office would suffer minimal  
 consequences if the change were implemented. But this is a particularly restricted view of the  
 possible adverse consequences to competition from copper loop retirement. Verizon's proposed  
 changes will permanently foreclose provision of valuable xDSL-based broadband services.

In this instance, the future impact of the proposed changes is more important than the  
 immediate disconnection of service for some customers because the proposed changes will  
 permit ILECs to anticompetitively restrict competition and permanently foreclose provision of  
 innovative broadband services to consumers in wide areas. Further, these assets have  
 already been paid for by ratepayers/consumers and their retention in place merely allows ILECs  
 to waste these resources in order to inhibit competition. The future impact of

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<sup>18</sup> TRO ¶ 248

the proposed changes is critical in light of the Act's long term goals under Section 706 to encourage provision of advanced services to all Americans.

For these reasons, the undersigned competitive carriers object to the cramped and outdated narrow focus of the showing envisioned by Section 51.333(c). Whatever validity the current rules may have with respect to routine network modifications, they make no sense for drastic changes that technically preclude CLECs from providing service. As stated in the Petition, the current rules do not adequately protect against the harm caused by anticompetitive copper loop retirements. Compliance with current rules regarding how carriers will accommodate ILECs' proposed changes are pointless for changes that will eliminate the carriers' ability to serve customers. The Commission should grant this Objection in light of the recognition that its current network disclosure rules do not address or even contemplate changes that terminate carriers' ability to provide service. As such, the current rules do not take account of the utility of copper to provide valuable competitive broadband services to consumers.

Nonetheless, subject to these concerns, the undersigned carriers provide below the information responsive to Section 51.333(c) of the rules.

## V. SECTION 51.333(C)(1) STATEMENTS

Section 51.333(c)(1). Section 51.333(c)(1) requires that objections state specific reasons why the objector cannot accommodate the ILEC's changes by the date stated in the ILEC's public notice and indicate any technical information or other assistance required that would enable the objector to accommodate those changes.

Objectors cannot accommodate Verizon's changes by the date specified, or by any date, because Verizon unnecessarily intends to prevent access to copper feeder after it installs fiber.

This will make it impossible for CLECs to provide xDSL broadband services, as stated in Verizon's notices. There is no technical information or assistance other than retention of unbundled access to complete copper loops that would permit CLECs to accommodate the proposed change since Verizon intends to prevent access to the copper loops that are the technical *sine qua non* of provision of DSL-based broadband service.

Section **51.333(c)(2)**. This section requires that an objector list steps that it is taking to accommodate the ILEC's changes on an expedited basis. There are no steps that CLECs can take to accommodate Verizon's proposed changes on an expedited or other basis because Verizon proposes to completely foreclose provision **of** xDSL-based broadband services at the relevant locations by making copper loops off limits for unbundled access. The undersigned competitive carriers, however, are prepared to work with Verizon on an expedited basis to reach agreement on reasonable terms and conditions **for** continued access to the copper feeder portion **of** loops consistent with current interconnection agreements and UNE rules.

Section **51.333(c)(3)**. This section requires objectors **to** state the earliest possible date (not to exceed six months from the date the ILEC gave in its notice) by which the objector anticipates that it can accommodate the ILEC's changes, assuming it receives the technical information or other assistance requested under Section **51.333(c)(1)**. For the reasons stated, there is no date by which objectors could accommodate the proposed

changes. **As** found in the TRO, CLECs are impaired without unbundled access to copper loops for provision of both broadband and narrowband **services**.<sup>19</sup>

**Section 51.333(c)(4).** This section requires objectors to provide any other information relevant to the objection. The undersigned CLECs provide no other relevant information because there are no changes or steps that would make it possible for CLECs to provide xDSL-based services if the proposed in-place "retirement" of copper feeder is permitted

## **VI. THE REQUESTED RELIEF WOULD NOT HARM VERIZON**

The Commission should permit Verizon to install fiber feeder subject to the requirement that it provide unbundled access to copper loops at the specified locations. This would not harm Verizon or its customers in any respect. It would not preclude Verizon from upgrading the feeder portion of loops to fiber. In reply comments to the Petition, **ILECs** have advanced not a single operational or technical reason why they may not continue unbundled access to spare copper loops, notwithstanding their upgrade of feeder to fiber for the services that ILECs provide to their own customers. **As** already explained by the undersigned competitive carriers, ILECs would not incur any inefficiencies or unreimbursed costs in retaining copper and making it available for **unbundling**.<sup>20</sup> There would be no network operational inefficiencies because ILECs' traffic will be carried over separate fiber, which is exempt from unbundling. Nor would ILECs experience unreimbursed costs. Under current rules, ILECs are not required to maintain

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<sup>19</sup> TRO ¶ 248.

<sup>20</sup> Reply Comments of Bridgecom International, Inc. et al., RM-I 1358, filed April 2, 2007, 3-4.

copper that is not actually being used, but are required to incur relief and rehabilitation costs when a CLEC requests unbundled access.<sup>21</sup> Those costs, and any other reasonable costs of operating unbundled loop facilities, will be recovered by the ILECs through cost-based rates for unbundled access to copper loops which, under TELRIC, includes a reasonable profit? **As** also pointed out, payments for loops that would otherwise be retired would be a windfall for ILECs since they would otherwise receive nothing for these loops if they were abandoned.<sup>23</sup> Accordingly, the Commission should conclude that continuation of the unbundling obligation, as requested in this Objection would not impose unreasonable burdens on Verizon.

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<sup>21</sup> *TKO ¶ 277*

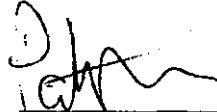
<sup>22</sup> This would almost certainly continue to be the case under any revised UNE pricing formula. *Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, WC Docket No. 03-173, Notice of Proposed Rulemaking, FCC 03-224 (September 15,2003).

<sup>23</sup> Reply Comments of Bridgecom International, Inc. *et al.*, RM-11358, filed April 2,2007, 15



## MI. CONCLUSION

For these reasons, and all the reasons stated in the Petition, the Commission should permit Verizon to install fiber feeder subject to the requirement that it make copper loops available from the specified locations. This requirement should continue, at a minimum, pending consideration of the Petition.



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*TalkAmerica Holdings, Inc.*  
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*Telecommunications*

April 19, 2007

CERTIFICATE OF SERVICE

I hereby certify on this 19<sup>th</sup> day of April, 2007 that copies of the foregoing **Objection in  
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